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JAMES H. McKENNEY,
Clerk.

No. 129.
Motion to dismiss
Filed Dec. 10, 1900.

(17,505.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 129.

THE NEW ORLEANS DEBENTURE REDEMPTION COMPANY OF LOUISIANA, LIMITED, ET AL., PLAINTIFFS IN ERROR,

versus

THE STATE OF LOUISIANA.

In Error to the Supreme Court of the State of Louisiana.

And now comes the State of Louisiana, defendant in error, herein, by Walter Guion, Attorney General for the State of Louisiana, and by Milton J. Cunningham and Frank E. Rainold, who appear as counsel in her behalf, and moves the Court to dismiss the writ of error in the above cause for want of jurisdiction, because the judgment or decree from which the said writ of error purports to have been taken is the judgment or decree of the Supreme Court of one of the United States, to-wit: Supreme Court of the State of Louisiana.

2. Because said judgment remanded said cause for further proceedings in the lower court, and the judgment was and is therefore not a final one.

After the Supreme Court had rendered judgment in this cause, applications for a rehearing were made by all parties. The Court, in passing on these applications, amended the judgment so as to remand the cause to the lower court for the purpose of determining whether the liquidation of the corporation should be through a receiver to be appointed by the Court, through a liquidator to be appointed by the Governor of the State, or whether the defendants themselves should have the right to liquidate its own affairs. The cause has, therefore, not been determined by a final judgment.

3. Because by said judgment no decision was made upon a federal question which had been raised by the plaintiffs in error. The plaintiffs in error claim that there was not due process of law inasmuch as the citation was addressed to the New Orleans Debenture Redemption Company of Louisiana, Limited, through its proper officers, and took the position, that citation should have been addressed to each and every owner of a share of stock in the corporation.

This is a suit to oust the corporation from the exercise of its franchise, and the manner and form of citation, in such a case, is provided by statute of the State of Louisiana. This statute provides that citation should be addressed to the defendant, as in ordinary cases, and that service should be made as in ordinary cases. The Supreme Court held that citation had issued properly and had been served in accordance with the terms of the statute as well as with the provisions of the charter of plaintiffs in error. Nowhere in the pleadings was the constitutionality of this statute raised by the plaintiffs in error, and hence there is no federal ques-

tion involved in this cause. There has been no taking of property without due process of law, because the judgment of the Supreme Court is not final as to the disposition of the assets of plaintiffs in error. The whole question was remanded to the lower court and left an open one as to whether the parties in interest should be allowed to liquidate their own affairs, or whether the assets should be distributed under the supervision of the court. Until the lower court shall have appointed a receiver, or confirmed a liquidator, there can be no taking of property either with or without due process of law. The issuance of an injunction, which restrained the corporation, its officers, agents and employees from disposing of the property during the continuance of the suit, and from carrying on business as a corporation until its right so to do had been determined by final judgment, does not involve a federal question.

4. Because the judgment rendered by the Supreme Court was given on grounds which Section 709 of the Revised Statutes of the United States does not make cause for error. In its opinion, the State Supreme Court not only decided that the citation issued in accordance with the terms of the Statute of the State, but likewise found the following facts:

That all the persons connected with the Association as stockholders had appointed the President as the proper person upon whom citation might be served in any suit that might be brought against them.

By this convention they likewise agreed that they could be sued in the name of the New Orleans Debenture Redemption Company of Louisiana, Limited; hence the parties were bound by their agreement, and since citation had issued to them in the manner and form as they agreed it should issue, and was served upon the officers designated by them, they had no ground for complaint. As the decision of the State

Supreme Court could stand upon these grounds alone this case furnishes no cause for error.

Wherefore mover prays that this motion to dismiss be granted and the writ of error dismissed for want of jurisdiction; but should said motion be not allowed for the reasons set forth, that the judgment of the Supreme Court of Louisiana be finally affirmed with costs, and mover prays for such other and necessary relief which the nature of the case may require.